

**RULES
OF
THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT
DIVISION OF BUSINESS AND INDUSTRY SERVICES**

**CHAPTER 0500—5—1
SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS ASSISTANCE PROGRAM**

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0500—5—1—.01 AUTHORITY.

- (1) Pursuant to the provisions of *T.C.A. §4—3—702(c)*, the commissioner of the department of economic and community development may promulgate rules and regulations necessary for the operation of the department to effectuate any of the programs or responsibilities of any of the divisions of the department. Pursuant as well to the provisions of *T.C.A. §§65—5—212 to 65—5—213*, the department of economic and community development, with assistance from the comptroller of the treasury relative to loan guarantee administration, shall develop by rule an assistance program for small and minority-owned telecommunications businesses.

Authority: *T.C.A. §§4—3—702(c), 65—5—212, and 65—5—213. Administrative History:* Original rule filed December 31, 1996; effective April 30, 1997.

0500—5—1—.02 PURPOSE AND SCOPE.

- (1) The Small and Minority-Owned Telecommunications Business Assistance Program is committed to encourage and support small and minority-owned telecommunication businesses (see Qualifying Business as defined in rule 0500—5—1—.03), as well as to further their development and enhance their ability to maximize business opportunities in the area of telecommunications. To achieve that result, the Small and Minority-Owned Telecommunications Business Assistance Program provides program assistance, which is comprised of loan guarantees (as defined in rule 0500—5—1—.03) and program services (as defined in rule 0500—5—1—.03), to Qualifying Businesses in Tennessee.
- (2) This program is to be serviced from the small and minority-owned telecommunications business assistance program fund (“Program Fund”) created by *T.C.A. §65—5—213*. Program assistance is to be fairly distributed among the geographic divisions of the State, with a maximum of forty percent (40%) of such assistance allocated to any grand division, with such assistance then equitably divided among Qualifying Businesses within each grand division.
- (3) The award of any program assistance in the form of loan guarantees is to be determined by the Commissioner of the Department of Economic and Community Development, upon recommendation from a Loan Committee (established herein by rule 0500—5—1—.13). Specific administration and oversight of loan guarantees is to be provided by the Comptroller of the Treasury. A reserve of at least ninety-six percent (96%) of the annual contributions to the program fund shall be dedicated to loan guarantees, with a maximum of two percent (2%) of that amount allocated for collection, enforcement and any other specific costs relative to the administration of the loan guarantees, on an as required basis only.

(Rule 0500—5—1—.02, continued)

- (4) All program services offered under this program shall be administered by the Department of Economic and Community Development through its Office of Minority Business Enterprise and Small Business Office. A maximum of four percent (4%) of the annual contributions to the program fund may be utilized by ECD in order to pay the specific costs of the program services and any expenses incurred by the Loan Committee, on an as required basis only.
- (5) Once the program fund has received its total contributions, which has been mandated by *T.C.A. §65—5—213* to occur five years after the start of the program, any administrative costs or expenses relative to loan guarantees, the Loan Committee or the program services will be limited and cannot exceed the total amount of annual interest generated by the program fund, or the above percentages when treating annual interest as annual contributions, whichever amount is less.

Authority: *T.C.A. §§4—3—702(c), 65—5—212, and 65—5—213. Administrative History: Original rule filed December 31, 1996; effective April 30, 1997.*

0500—5—1—.03 DEFINITIONS. The following definitions shall apply to these rules.

- (1) Act - *T.C.A. §§65—5—212 to 65—5—213*, as the same may be amended from time to time.
- (2) Applicant - A Qualifying Business which has filed Application to ECD for program assistance.
- (3) Application - The form required of an Applicant for program assistance, which requests a loan guarantee and/or program services.
- (4) ECD - The Tennessee Department of Economic and Community Development.
- (5) Gross Receipts - Annual total revenue exclusive of deductions.
- (6) Lender - A lending institution duly qualified to do business in the state of Tennessee.
- (7) Loan - The loan for a specific Project for which the Applicant has requested a Loan Guarantee.
- (8) Loan Committee - The loan committee appointed in accordance with Section 0500—1—.13 herein to evaluate applications for loan guarantees and recommend their disposition to the Commissioner of ECD.
- (9) Loan Documents - Documents evidencing the loan relationship between the Applicant and the Lender.
- (10) Loan Guarantee - The obligation of the Program to the Lender which guarantees the Loan on behalf of an Applicant.
- (11) Minority-Owned Business - A business which is solely owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of such business, and who is impeded from normal entry into the economic mainstream because of race, religion, sex, or national origin and such business has annual gross receipts of less than four million dollars (\$4,000,000).
- (12) Program - The Small and Minority-Owned Telecommunications Business Assistance Program.
- (13) Program Assistance - Program assistance consists of Loan Guarantees and Program Services as described in these Rules.

(Rule 0500—5—1—.03, continued)

- (14) Program Fund - The Small and Minority-Owned Telecommunications Business Assistance Program Fund, created by *T.C.A. §65—5—213*.
- (15) Program Services - Services, including but not limited to, technical assistance, education and consulting services provided by ECD under the Program to Qualifying Businesses which may or may not be making Application for a Loan Guarantee.
- (16) Project - The telecommunications activity as proposed by the Applicant in the Application and the approved purpose of the Loan.
- (17) Qualifying Business - An individually-owned business, a partnership, a limited liability partnership, a limited liability corporation, or any other incorporated entity which satisfies the following definitions under these Rules: Telecommunications Business and either Small Business or Minority-Owned Business; and further, is eligible to do business in Tennessee, is located in and maintains operations in Tennessee during the term of the Loan for which a Loan Guarantee is requested or at the time program services are requested. A material change in any of the foregoing qualifications may be cause for denial or revocation of any loan guarantees or program services.
- (18) Rules - This new Rule Chapter, promulgated under the authority of the Act by ECD for the purpose of administering the Program.
- (19) Small Business - A business with annual gross receipts of less than four million dollars (\$4,000,000).
- (20) Telecommunications Business - A business whose primary purpose is to provide directly, or to facilitate or enhance the provision of, services and equipment for electronic communications, including but not limited to the following:
 - (a) Telecommunications Service Providers (Public Acts of 1995, Ch. 408, Sec. 3)
 - (b) Personal Communications Systems/Networks
 - (c) Cellular Telephone Service
 - (d) Satellite Telecommunications
 - (e) Re-sellers of Local and Long Distance Telephone Services
 - (f) Pay Telephones
 - (g) Published Directory Services
 - (h) Directory Assistance
 - (i) Operator Services
 - (j) Beepers/Paging Services
 - (k) Answering Services/Voice Mail
 - (l) Sales Agents of Telecommunications Services
 - (m) Telecommunications Equipment Manufacturing or Sales

(Rule 0500—5—1—.03, continued)

- (n) Telecommunications Repair and Maintenance
- (o) Telecommunications Right-of-Way Contractors
- (p) Telecommunications Wiring Contractors and Subcontractors
- (q) Telecommunications Consultants
- (r) Telecommunications Research
- (s) Telecommunications Billing and Collection Services
- (t) Internet Access Providers
- (u) Electronic Bulletin Boards
- (v) Customer Premises Computers and Equipment for Electronic Communications.

Authority: T.C.A. §§4—3—702(c), 65—5—212, and 65—5—213. **Administrative History:** Original rule filed December 31, 1996; effective April 30, 1997.

0500—5—1—.04 AUTHORITY OVER PROGRAM FUND.

- (1) The Small and Minority-Owned Telecommunications Business Assistance Fund, created pursuant to T.C.A. §65—5—213, shall be retained in the Treasury primarily as a reserve for loan guarantees under the Program. Upon authorization by the Comptroller of the Treasury, the Department of Finance and Administration will disburse only those funds necessary to implement and service the Program as specified in these Rules.
- (2) At the end of each fiscal year, the Comptroller of the Treasury, with the assistance of ECD, will prepare an annual report regarding the status of the Program Fund. This report will specify the total amount of funds dedicated to existing loan guarantees, the amount of funds available for new loan guarantees, the cost to administer the loan guarantees, expenses of the loan committee, the cost of program services, and any other pertinent information relative to the Program Fund.

Authority: T.C.A. §§4—3—702(c), 65—5—212, and 65—5—213. **Administrative History:** Original rule filed December 31, 1996; effective April 30, 1997.

0500—5—1—.05 ELIGIBLE AND RETROACTIVE PROJECTS.

- (1) Loan Guarantees will only be made on the behalf of Applicants for Loans which initially finance a Project. The refinancing of any existing debt will not be considered eligible for a Loan Guarantee.
- (2) ECD will not review any Application in which the Qualifying Business is seeking a Loan Guarantee for a loan already obtained or a loan commitment already obtained, unless the commitment is contingent upon the award of a Loan Guarantee under the Program.

Authority: T.C.A. §§4—3—702(c), 65—5—212, and 65—5—213. **Administrative History:** Original rule filed December 31, 1996; effective April 30, 1997.

0500—5—1—.06 MAXIMUM LOAN GUARANTEE AMOUNT.

- (1) The Loan Committee may recommend a Loan Guarantee for a maximum amount of eighty percent (80%) of the principal amount of a Loan, not to exceed four hundred thousand dollars (\$400,000) per Loan Guarantee award to a Qualifying Business. Annual cumulative Loan Guarantee awards to a Qualifying Business shall not exceed four hundred thousand dollars (\$400,000). In order to achieve equitable distribution of the benefits of the Program, the Loan Committee may lower the maximum amount of a Loan Guarantee and may limit the number of Loan Guarantees per Applicant/Qualifying Business. At no time will the Loan Committee recommend nor the commissioner approve the encumbrance of an amount in excess of funds available in the Program Fund, as determined by the Comptroller of the Treasury.

Authority: T.C.A. §§4—3—702(c), 65—5—212, and 65—5—213. **Administrative History:** Original rule filed December 31, 1996; effective April 30, 1997.

0500—5—1—.07 LOAN GUARANTEE. When evaluating any Applications for Loan Guarantees under this Program, the Loan Committee shall follow prudent lending practices.

- (1) Term. The maximum permitted repayment periods for Loans are as follows:
 - (a) for buildings, the lesser of fifteen (15) years or useful life,
 - (b) for equipment, the lesser of seven (7) years or useful life,
 - (c) and for working capital, three (3) years.
- (2) Late Charges. Late charges, as permitted by law, may be imposed.
- (3) Loan Interest Rate. The interest rate on a Loan may be fixed or variable as negotiated by the Lender and the Applicant and approved by the Loan Committee. There is no established minimum rate; however, the Loan Committee will give greater consideration to Applications with a fixed rate over a variable rate. The Loan Committee will not recommend for approval a Loan Guarantee for a Loan with an interest rate that it deems, in its sole reasonable discretion, to be excessive.
- (4) Collateral and Security. Both business and personal collateral may be taken as security for a Loan Guarantee. Personal guarantees of the principals owning twenty percent (20%) of the business may be required. Lesser owners may be required to provide limited guarantees on a case-by-case review. Assets acquired with Loan proceeds are generally expected to secure the Loan and the Loan Guarantee. The Loan Guarantee shall also be secured by liens on and security interests in the Qualifying Business and other collateral approved by the Lender and the Loan Committee.
- (5) Change of Ownership. If at any time during the term of the Loan Guarantee the Qualifying Business ceases to be used to provide telecommunication services, or the Applicant sells, ceases to own, assigns, transfers, or otherwise disposes of all or any part of the Qualifying Business, it is the responsibility of the Applicant to notify the Program prior to the change of ownership. The Loan Committee may recommend action in accordance with the terms of the Loan Documents (or may require the Lender to take such action on its behalf), to accelerate the payment of the entire principal and interest due under the Loan Guarantee or other appropriate action.
- (6) Title Insurance. The Loan Committee or the Lender may require the Applicant to provide a Loan Policy of Title Insurance (a) issued by a title insurance company acceptable to the Loan Committee, (b) for an amount equal to the maximum principal amount of the loan, (c) insuring the Lender and the Program, (d) evidencing that on the date of closing, interests in the property on or in which the Qualifying Business is located, as well as any properties offered as collateral, are vested in the appropriate party, and (e) containing only standard exceptions and encumbrances approved by the Loan Committee. The Loan Committee may require the title insurance policy to be

(Rule 0500—5—1—.07, continued)

accompanied by a survey and title to the property, certified in the manner required by the Loan Committee and showing that there are no easements or encroachments upon or other matters pertaining to the property, except those acceptable to the Loan Committee.

In Applications where the Qualifying Business is to be housed in a leased facility, the Loan Committee or the Lender may require the Applicant to provide a fully executed lease agreement.

- (7) Insurance. The Loan Committee may require the Applicant, owners, and/or key managers to obtain and assign to the Program life insurance in the amount of the Loan. The Loan Committee may also require business interruption insurance, hazard and casualty insurance, flood insurance, home owner's insurance, and other appropriate forms of insurance.
- (8) Appraisals. The Loan Committee may require appraisals by qualified appraisers for each property offered as collateral for the Loan or Loan Guarantee.
- (9) Other. The Loan Committee may require environmental audits as well as other documents at its reasonable discretion.

Authority: T.C.A. §§4—3—702(c), 65—5—212, and 65—5—213. **Administrative History:** Original rule filed December 31, 1996; effective April 30, 1997.

0500—5—1—.08 LOAN DOCUMENTS.

- (1) Prior to the execution of any Loan Guarantee under the Program, the Lender or the Applicant will provide the Program with copies of relevant Loan Documents at the direction of the Loan Committee.

Authority: T.C.A. §§4—3—702(c), 65—5—212, and 65—5—213. **Administrative History:** Original rule filed December 31, 1996; effective April 30, 1997.

0500—5—1—.09 APPLICATION AND APPLICATION REVIEW.

- (1) Applicants must submit a complete Application to ECD to be considered for a Loan Guarantee under the Program. As applicable, the Loan Documents required by the Lender from the Applicant will be accepted by ECD in partial fulfillment of the Application. A complete Application consists of a description of Applicant with management profiles; itemized Project budget (start-up and operating, known and estimated costs); Project description; amount of Loan Guarantee assistance sought from the Program; estimated completion time; Project justification (information relating to the Applicant's inability to obtain adequate financing through normal private sector lenders at reasonable terms); population to be served; and detail of other funds available to the Applicant without the Program's Loan Guarantee. The Application will also include, if applicable: a current audited balance sheet; profit and loss statements; credit references; cash flow statement; information pertaining to collateral required by the Lender. ECD reserves the right to request any other relevant information under the Program. ECD will review an Application for completeness, eligibility, and soundness. ECD reserves the right to reject any Application that is found ineligible under any provision of the Act or these Rules. If, after such review, it is determined that the Applicant is eligible under the provisions of the Act and these Rules, ECD is authorized to submit the Application to the Loan Committee for evaluation.

Authority: T.C.A. §§4—3—702(c), 65—5—212, and 65—5—213. **Administrative History:** Original rule filed December 31, 1996; effective April 30, 1997.

0500—5—1—.10 REGULATORY COMPLIANCE.

- (1) All program assistance shall be contingent upon the Applicant complying with all applicable federal, state, and local regulations for the operation of a Telecommunications Business. If an Applicant is found to be in non-compliance of such regulations by an appropriate administrative or judicial governing body, ECD may take action in accordance with the terms of the Loan Documents (or may require the Lender to take such action on its behalf), to accelerate the payment of the entire principal and interest due under the Loan Guarantee or other appropriate action, at the sole reasonable discretion of the Loan Committee.

Authority: T.C.A. §§4—3—702(c), 65—5—212, and 65—5—213. **Administrative History:** Original rule filed December 31, 1996; effective April 30, 1997.

0500—5—1—.11 NONDISCRIMINATION.

- (1) No person on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal and/or Tennessee State constitutional and/or statutory law, shall be excluded from participation in, or be denied the benefits of, or be otherwise subjected to discrimination in the performance of this Program, or in the employment practices of the Applicant. The Applicant shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notices of non-discrimination. If an Applicant is found to be in non-compliance of such regulations by an appropriate administrative or judicial governing body, ECD may take action in accordance with the terms of the Loan Documents (or may require the Lender to take such action on its behalf), to accelerate the payment of the entire principal and interest due under the Loan Guarantee or other appropriate action, at the sole reasonable discretion of the Loan Committee.

Authority: T.C.A. §§4—3—702(c), 65—5—212, and 65—5—213. **Administrative History:** Original rule filed December 31, 1996; effective April 30, 1997.

0500—5—1—.12 MONITORING LOAN GUARANTEES.

- (1) ECD will monitor all Projects together with the repayment of any Loans for which Loan Guarantees are awarded. ECD will report to the Comptroller of the Treasury any material problem which could result in a default on any Loan guaranteed pursuant to this Program.
- (2) In the event that a Loan Guarantee is called upon, the Comptroller of the Treasury shall, as appropriate, be authorized to institute any enforcement action and/or pursue any collection remedy against the Qualifying Business.

Authority: T.C.A. §§4—3—702(c), 65—5—212, and 65—5—213. **Administrative History:** Original rule filed December 31, 1996; effective April 30, 1997.

0500—5—1—.13 LOAN COMMITTEE.

- (1) Membership and Governance.
 - (a) A Loan Committee shall be established for the purpose of evaluating and recommending action relative to loan guarantees under the Program. The Loan Committee shall consist of the commissioner of economic and community development or the commissioner's designee, and six (6) appointed members, two (2) of whom shall be appointed by the governor to represent the Tennessee banking industry, one (1) of whom shall be appointed by the governor from the telecommunications industry nominated by the commissioner of economic and community development, and three (3) of whom shall be appointed by the commissioner of

(Rule 0500—5—1—.13, continued)

economic and community development to represent by residency each of the three (3) geographical divisions of the state and shall be competent to serve on the Loan Committee by reason of experience in related business and telecommunications fields. At all times at least two (2) members of the Loan Committee shall be a minority and at least (1) member shall be a female.

- (b) On or before May 1, 1997, the governor and the commissioner of economic and community development shall appoint the members of the Loan Committee who shall serve a three (3) year term; except that in the initial appointment, three (3) of the appointive members shall be designated to serve a five (5) year term. Appointed members shall be eligible for reappointment at the discretion of the appointing authority.
- (c) Any person appointed to fill a vacancy in the office of a member of the Loan Committee shall be appointed in a like manner and shall serve for only the unexpired term of such member. Such member shall be eligible for reappointment. Members shall serve until their successors are appointed. Any member may be removed by the governor for cause.
- (d) Five (5) of the members of the Loan Committee shall constitute a quorum, and the affirmative vote of fifty-one percent (51%) of the convened members shall be necessary for any action to be taken by the Loan Committee.
- (e) The appointed members of the Loan Committee shall serve without compensation, but each member shall be entitled to reimbursement for reasonable expenses incurred in the performance of official duties.
 - 1. All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(2) Conflict of Interest.

- (a) Participation in the Program by any member of the Loan Committee or member of the ECD staff serving as support to the Loan Committee shall be governed by the provisions of *T.C.A. §12—4—101 et seq.*
- (b) No member of the Loan Committee or member of the ECD staff serving as support to the Loan Committee shall be directly interested, as defined in *T.C.A. §12—4—101(a)(1)*, in any Qualifying Business for which the Loan Committee is considering a Loan Guarantee for the duration of his or her tenure with the Loan Committee.
- (c) Any member of the Loan Committee or member of the ECD staff serving as support to the Loan Committee who is indirectly interested, as defined in *T.C.A. §12—4—101(b)*, in any Qualifying Business for which the Loan Committee is considering a Loan Guarantee must disclose such interest in writing and shall refrain from participation in any discussion or activity by the Loan Committee in connection with such application for a Loan Guarantee. This disclosure shall be set forth in the official minutes of the Loan Committee.
- (d) Any violations of *T.C.A. §12—4—101* the foregoing provisions shall be subject to the penalties specified in *T.C.A. §12—4—102*.

Authority: *T.C.A. §§ 4—3—702(c), 12—4—101, and 12—4—102. Administrative History:* Original rule filed December 31, 1996; effective April 30, 1997.

0500—5—1—.14 PROGRAM SERVICES.

- (1) The Program shall also provide Program Services in the form of technical assistance and education and consulting services to Qualifying Businesses who may or may not be making Application for Loan Guarantees under the Program. Program Services shall be administered by ECD and shall include but are not limited to: financial counseling and assistance with packaging loan proposals, conducting pertinent training workshops and seminars, certifying Qualifying Businesses and identifying procurement opportunities with state, federal, and local government systems.

Authority: T.C.A. §§4—3—702(c), 65—5—212, and 65—5—213. **Administrative History:** Original rule filed December 31, 1996; effective April 30, 1997.